

**§ 1203. Research and development****(a) In general**

The Under Secretary of Homeland Security for Science and Technology, in consultation with the director of the National Institute of Standards and Technology and the chairman of the Federal Communications Commission, shall establish a research, development, testing, and evaluation program based on the recommendations of the Commercial Mobile Service Alert Advisory Committee, established pursuant to section 1202(a) of this title, to support the development of technologies to increase the number of commercial mobile service devices that can receive emergency alerts.

**(b) Functions**

The program established under subsection (a) shall—

- (1) fund research, development, testing, and evaluation at academic institutions, private sector entities, government laboratories, and other appropriate entities; and
- (2) ensure that the program addresses, at a minimum—
  - (A) developing innovative technologies that will transmit geographically targeted emergency alerts to the public; and
  - (B) research on understanding and improving public response to warnings.

(Pub. L. 109-347, title VI, §604, Oct. 13, 2006, 120 Stat. 1940.)

**§ 1204. Grant program for remote community alert systems****(a) Grant program**

The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of Homeland Security, shall establish a program under which grants may be made to provide for outdoor alerting technologies in remote communities effectively unserved by commercial mobile service (as determined by the Federal Communications Commission within 180 days after October 13, 2006) for the purpose of enabling residents of those communities to receive emergency alerts.

**(b) Applications and conditions**

In conducting the program, the Under Secretary—

- (1) shall establish a notification and application procedure; and
- (2) may establish such conditions, and require such assurances, as may be appropriate to ensure the efficiency and integrity of the grant program.

**(c) Sunset**

The Under Secretary may not make grants under subsection (a) more than 5 years after October 13, 2006.

**(d) Limitation**

The sum of the amounts awarded for all fiscal years as grants under this section may not exceed \$10,000,000.

(Pub. L. 109-347, title VI, §605, Oct. 13, 2006, 120 Stat. 1940.)

**§ 1205. Funding****(a) In general**

In addition to any amounts provided by appropriation Acts, funding for this chapter shall be provided from the Digital Transition and Public Safety Fund in accordance with section 3010 of the Digital Television Transition and Public Safety Act of 2005 (47 U.S.C. 309 note).

**(b) Compensation**

The Assistant Secretary of Commerce for Communications and Information shall compensate any such broadcast station licensee or permittee for reasonable costs incurred in complying with the requirements imposed pursuant to section 1201(c) of this title from funds made available under this section. The Assistant Secretary shall ensure that sufficient funds are made available to effectuate geographically targeted alerts.

**(c) Credit**

The Assistant Secretary of Commerce for Communications and Information, in consultation with the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Commerce for Oceans and Atmosphere, may borrow from the Treasury beginning on October 1, 2006, such sums as may be necessary, but not to exceed \$106,000,000, to implement this chapter. The Assistant Secretary of Commerce for Communications and Information shall ensure that the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Commerce for Oceans and Atmosphere are provided adequate funds to carry out their responsibilities under sections 1203 and 1204 of this title. The Treasury shall be reimbursed, without interest, from amounts in the Digital Television Transition and Public Safety Fund as funds are deposited into the Fund.

(Pub. L. 109-347, title VI, §606, Oct. 13, 2006, 120 Stat. 1941.)

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original “this title”, meaning title VI of Pub. L. 109-347, Oct. 13, 2006, 120 Stat. 1936, which is classified principally to this chapter. For complete classification of title VI to the Code, see Short Title note set out under section 1201 of this title and Tables.

Section 3010 of the Digital Television Transition and Public Safety Act of 2005, referred to in subsec. (a), is section 3010 of Pub. L. 109-171, which is set out in a note under section 309 of this title.

**CHAPTER 12—BROADBAND**

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1301.	Findings.
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**§ 1301. Findings**

The Congress finds the following:

- (1) The deployment and adoption of broadband technology has resulted in enhanced economic development and public safety for com-

munities across the Nation, improved health care and educational opportunities, and a better quality of life for all Americans.

(2) Continued progress in the deployment and adoption of broadband technology is vital to ensuring that our Nation remains competitive and continues to create business and job growth.

(3) Improving Federal data on the deployment and adoption of broadband service will assist in the development of broadband technology across all regions of the Nation.

(4) The Federal Government should also recognize and encourage complementary State efforts to improve the quality and usefulness of broadband data and should encourage and support the partnership of the public and private sectors in the continued growth of broadband services and information technology for the residents and businesses of the Nation.

(Pub. L. 110-385, title I, §102, Oct. 10, 2008, 122 Stat. 4096.)

#### SHORT TITLE

Pub. L. 110-385, title I, §101, Oct. 10, 2008, 122 Stat. 4096, provided that: “This title [enacting this chapter and amending section 1302 of this title] may be cited as the ‘Broadband Data Improvement Act’.”

#### EX. ORD. NO. 13616. ACCELERATING BROADBAND INFRASTRUCTURE DEPLOYMENT

Ex. Ord. No. 13616, June 14, 2012, 77 F.R. 36903, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to facilitate broadband deployment on Federal lands, buildings, and rights of way, federally assisted highways, and tribal and individual Indian trust lands (tribal lands), particularly in underserved communities, it is hereby ordered as follows:

SECTION 1. *Policy.* Broadband access is essential to the Nation’s global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability. While broadband infrastructure has been deployed in a vast majority of communities across the country, today too many areas still lack adequate access to this crucial resource. For these areas, decisions on access to Federal property and rights of way can be essential to the deployment of both wired and wireless broadband infrastructure. The Federal Government controls nearly 30 percent of all land in the United States, owns thousands of buildings, and provides substantial funding for State and local transportation infrastructure, creating significant opportunities for executive departments and agencies (agencies) to help expand broadband infrastructure.

SEC. 2. *Broadband Deployment on Federal Property Working Group.* (a) In order to ensure a coordinated and consistent approach in implementing agency procedures, requirements, and policies related to access to Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands to advance broadband deployment, there is established a Broadband Deployment on Federal Property Working Group (Working Group), to be co-chaired by representatives designated by the Administrator of General Services and the Secretary of Homeland Security (Co-Chairs) from their respective agencies, in consultation with the Director of the Office of Science and Technology Policy (Director) and in coordination with the Chief Performance Officer (CPO).

(b) The Working Group shall be composed of:

(i) a representative from each of the following agencies, and the Co-Chairs, all of which have significant ownership of, or responsibility for managing, Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands (Broadband Member Agencies):

- (1) the Department of Defense;
- (2) the Department of the Interior;
- (3) the Department of Agriculture;
- (4) the Department of Commerce;
- (5) the Department of Transportation;
- (6) the Department of Veterans Affairs; and
- (7) the United States Postal Service;

(ii) a representative from each of the following agencies or offices, to provide advice and assistance:

- (1) the Federal Communications Commission;
- (2) the Council on Environmental Quality;
- (3) the Advisory Council on Historic Preservation;

and

- (4) the National Security Staff; and

(iii) representatives from such other agencies or offices as the Co-Chairs may invite to participate.

(c) Within 1 year of the date of this order, the Working Group shall report to the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement, established pursuant to Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), on the progress that has been made in implementing the actions mandated by sections 3 through 5 of this order.

SEC. 3. *Coordinating Consistent and Efficient Federal Broadband Procedures, Requirements, and Policies.* (a) Each Broadband Member Agency, following coordination with other Broadband Member Agencies and interested non-member agencies, shall:

(i) develop and implement a strategy to facilitate the timely and efficient deployment of broadband facilities on Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands, that:

(1) ensures a consistent approach across the Federal Government that facilitates broadband deployment processes and decisions, including by: avoiding duplicative reviews; coordinating review processes; providing clear notice of all application and other requirements; ensuring consistent interpretation and application of all procedures, requirements, and policies; supporting decisions on deployment of broadband service to those living on tribal lands consistent with existing statutes, treaties, and trust responsibilities; and ensuring the public availability of current information on these matters;

(2) where beneficial and appropriate, includes procedures for coordination with State, local, and tribal governments, and other appropriate entities;

(3) is coordinated with appropriate external stakeholders, as determined by each Broadband Member Agency, prior to implementation; and

(4) is provided to the Co-Chairs within 180 days of the date of this order; and

(ii) provide comprehensive and current information on accessing Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands for the deployment of broadband facilities, and develop strategies to increase the usefulness and accessibility of this information, including ensuring such information is available online and in a format that is compatible with appropriate Government websites, such as the Federal Infrastructure Projects Dashboard created pursuant to my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review).

(b) The activities conducted pursuant to subsection (a) of this section, particularly with respect to the establishment of timelines for permitting and review processes, shall be consistent with Executive Order 13604 and with the Federal Plan and Agency Plans to be developed pursuant to that order.

(c) The Co-Chairs, in consultation with the Director and in coordination with the CPO, shall coordinate, re-

view, and monitor the development and implementation of the strategies required by paragraph (a)(i) of this section.

(d) Broadband Member Agencies may limit the information made available pursuant to paragraph (a)(ii) of this section as appropriate to accommodate national security, public safety, and privacy concerns.

SEC. 4. *Contracts, Applications, and Permits.* (a) Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) contains provisions addressing access to Federal property for the deployment of wireless broadband facilities, including requirements that the General Services Administration (GSA) develop application forms, master contracts, and fees for such access. The GSA shall consult with the Working Group in developing these application forms, master contracts, and fees.

(b) To the extent not already addressed by section 6409, each Broadband Member Agency with responsibility for managing Federal lands, buildings, or rights of way (as determined by the Co-Chairs) shall, in coordination with the Working Group and within 1 year of the date of this order, develop and use one or more templates for uniform contract, application, and permit terms to facilitate nongovernment entities' use of Federal property for the deployment of broadband facilities. The templates shall, where appropriate, allow for access by multiple broadband service providers and public safety entities. To ensure a consistent approach across the Federal Government and different broadband technologies, the templates shall, to the extent practicable and efficient, provide equal access to Federal property for the deployment of wireline and wireless facilities.

SEC. 5. *Deployment of Conduit for Broadband Facilities in Conjunction with Federal or Federally Assisted Highway Construction.* (a) The installation of underground fiber conduit along highway and roadway rights of way can improve traffic flow and safety through implementation of intelligent transportation systems (ITS) and reduce the cost of future broadband deployment. Accordingly, within 1 year of the date of this order:

(i) the Department of Transportation, in consultation with the Working Group, shall review dig once requirements in its existing programs and implement a flexible set of best practices that can accommodate changes in broadband technology and minimize excavations consistent with competitive broadband deployment;

(ii) the Department of Transportation shall work with State and local governments to help them develop and implement best practices on such matters as establishing dig once requirements, effectively using private investment in State ITS infrastructure, determining fair market value for rights of way on federally assisted highways, and reestablishing any highway assets disturbed by installation;

(iii) the Department of the Interior and other Broadband Member Agencies with responsibility for federally owned highways and rights of way on tribal lands (as determined by the Co-Chairs) shall revise their procedures, requirements, and policies to include the use of dig once requirements and similar policies to encourage the deployment of broadband infrastructure in conjunction with Federal highway construction, as well as to provide for the reestablishment of any highway assets disturbed by installation;

(iv) the Department of Transportation, after outreach to relevant nonfederal stakeholders, shall review and, if necessary, revise its guidance to State departments of transportation on allowing for-profit or other entities to accommodate or construct, safely and securely maintain, and utilize broadband facilities on State and locally owned rights of way in order to reflect changes in broadband technologies and markets and to promote competitive broadband infrastructure deployment; and

(v) the Department of Transportation, in consultation with the Working Group and the American Association of State Highway and Transportation Officials, shall create an online platform that States and counties may use to aggregate and make publicly available

their rights of way laws and joint occupancy guidelines and agreements.

(b) For the purposes of this section, the term "dig once requirements" means requirements designed to reduce the number and scale of repeated excavations for the installation and maintenance of broadband facilities in rights of way.

SEC. 6. *General Provisions.* (a) This order shall be implemented consistent with all applicable laws, treaties, and trust obligations, and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Independent agencies are strongly encouraged to comply with this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

[Reference to the National Security Staff deemed to be a reference to the National Security Council Staff, see Ex. Ord. No. 13657, set out as a note under section 3021 of Title 50, War and National Defense.]

#### UNLEASHING THE WIRELESS BROADBAND REVOLUTION

Memorandum of President of the United States, June 28, 2010, 75 F.R. 38387, provided:

Memorandum for the Heads of Executive Departments and Agencies

America's future competitiveness and global technology leadership depend, in part, upon the availability of additional spectrum. The world is going wireless, and we must not fall behind. The resurgence of American productivity growth that started in the 1990s largely reflects investments by American companies, the public sector, and citizens in the new communications technologies that are what we know today as the Internet. The Internet, as vital infrastructure, has become central to the daily economic life of almost every American by creating unprecedented opportunities for small businesses and individual entrepreneurs. We are now beginning the next transformation in information technology: the wireless broadband revolution.

Few technological developments hold as much potential to enhance America's economic competitiveness, create jobs, and improve the quality of our lives as wireless high-speed access to the Internet. Innovative new mobile technologies hold the promise for a virtuous cycle—millions of consumers gain faster access to more services at less cost, spurring innovation, and then a new round of consumers benefit from new services. The wireless revolution has already begun with millions of Americans taking advantage of wireless access to the Internet.

Expanded wireless broadband access will trigger the creation of innovative new businesses, provide cost-effective connections in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform Americans' lives.

Spectrum and the new technologies it enables also are essential to the Federal Government, which relies on spectrum for important activities, such as emergency communications, national security, law enforcement, aviation, maritime, space communications, and numerous other Federal functions. Spectrum is also critical for many State, local, and tribal government functions. As the wireless broadband revolution unfolds, innovation can enable efficient and imaginative uses of spectrum to maintain and enhance the Government's capabilities.

In order to achieve mobile wireless broadband's full potential, we need an environment where innovation thrives, and where new capabilities also are secure, trustworthy, and provide appropriate safeguards for users' privacy. These characteristics will continue to be important to the adoption of mobile wireless broadband.

This new era in global technology leadership will only happen if there is adequate spectrum available to support the forthcoming myriad of wireless devices, networks, and applications that can drive the new economy. To do so, we can use our American ingenuity to wring abundance from scarcity, by finding ways to use spectrum more efficiently. We can also unlock the value of otherwise underutilized spectrum and open new avenues for spectrum users to derive value through the development of advanced, situation-aware spectrum-sharing technologies.

I therefore am hereby directing that executive departments, agencies, and offices, and strongly encourage that independent agencies, take the following steps:

SECTION 1. The Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), shall:

(a) collaborate with the Federal Communications Commission (FCC) to make available a total of 500 MHz of Federal and nonfederal spectrum over the next 10 years, suitable for both mobile and fixed wireless broadband use. The spectrum must be available to be licensed by the FCC for exclusive use or made available for shared access by commercial and Government users in order to enable licensed or unlicensed wireless broadband technologies to be deployed;

(b) collaborate with the FCC to complete by October 1, 2010, a specific Plan and Timetable for identifying and making available 500 MHz of spectrum as described in subsection (a) of this section. For purposes of successfully implementing any repurposing of existing spectrum in accordance with subsection (a) of this section, the Plan and Timetable must take into account the need to ensure no loss of critical existing and planned Federal, State, local, and tribal government capabilities, the international implications, and the need for appropriate enforcement mechanisms and authorities;

(c) convene the Policy and Plans Steering Group (PPSG) to advise NTIA on achieving the objectives in subsections (a) and (b) of this section. The Secretaries of Defense, the Treasury, Transportation, State, the Interior, Agriculture, Energy, and Homeland Security, the Attorney General, the Administrators of the National Aeronautics and Space Administration (NASA) and the Federal Aviation Administration, the Director of National Intelligence, the Commandant of the United States Coast Guard, and the head of any other executive department or agency that is currently authorized to use spectrum shall participate and cooperate fully, or in the case of independent agencies are strongly encouraged to, in the activities of the Department of Commerce in accomplishing subsections (a) and (b) of this section and promptly provide appropriate funding and staff resources for agency support to these efforts and the work of the PPSG; and

(d) submit, not later than 180 days after the Plan and Timetable described in subsection (b) of this section are completed, to the National Economic Council (NEC), the Office of Management and Budget (OMB), and the Office of Science and Technology Policy (OSTP) an interim report to assess progress against the Plan and Timetable developed in accordance with subsection (b) of this section. Additional interim reports shall be submitted 180 days after the submission of the first interim report and then annually thereafter until such time as the Plan and Timetable are completed. In preparing these reports, the Secretary of Commerce shall work cooperatively with the FCC and other relevant departments, agencies, and offices.

SEC. 2. The Director of OMB shall work with the Secretary of Commerce, through NTIA and in consultation

with affected departments, agencies, and offices, to incorporate into the Plan and Timetable referred to in section 1(b) of this memorandum adequate funding, incentives, and assistance to enable executive agencies or other affected entities to accomplish the actions specified in section 1(a) of this memorandum.

SEC. 3. The Secretary of Commerce, working through NTIA, in consultation with the National Institute of Standards and Technology, National Science Foundation (NSF), the Department of Defense, the Department of Justice, NASA, and other agencies as appropriate, shall create and implement a plan to facilitate research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies, including those that are secure and resilient.

SEC. 4. The FCC is strongly encouraged to work closely with the Department of Commerce, through NTIA, to carry out this memorandum as it relates to the FCC, including the repurposing of nonfederal Government spectrum as appropriate and identifying the mechanisms necessary to ensure compliance with the FCC's decisions.

SEC. 5. The NEC, the OMB, and the OSTP (in consultation with the Department of Commerce, working through NTIA, FCC, and the National Security Staff) shall assess, based on the interim report developed pursuant to section 1(d) of this memorandum, whether there has been sufficient progress in achieving the objectives of this memorandum or whether some other mechanism, such as an independent review panel, is needed to address those areas where sufficient progress is not occurring. The NEC, the OMB, and the OSTP shall make any necessary recommendations to the President regarding such progress 45 days after receiving the initial interim report required by section 1(d) of this memorandum and, as appropriate, following subsequent reports.

SEC. 6.

(a) To the extent permitted by law and within existing appropriations, the Department of Commerce, through NTIA, shall provide administrative support for the interagency groups created in this memorandum.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) Nothing in this memorandum shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interests of national security.

(d) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 7. The Secretary of Commerce is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

[Reference to the National Security Staff deemed to be a reference to the National Security Council Staff, see Ex. Ord. No. 13657, set out as a note under section 3021 of Title 50, War and National Defense.]

#### EXPANDING AMERICA'S LEADERSHIP IN WIRELESS INNOVATION

Memorandum of President of the United States, June 14, 2013, 78 F.R. 37431, provided:

Memorandum for the Heads of Executive Departments and Agencies

A combination of American entrepreneurship and innovation, private investment, and smart policy has positioned the United States as the global leader in wire-

less broadband technologies. Expanding the availability of spectrum for innovative and flexible commercial uses, including for broadband services, will further promote our Nation's economic development by providing citizens and businesses with greater speed and availability of coverage, encourage further development of cutting-edge wireless technologies, applications, and services, and help reduce usage charges for households and businesses. We must continue to make additional spectrum available as promptly as possible for the benefit of consumers and businesses. At the same time, we must ensure that Federal, State, local, tribal, and territorial governments are able to maintain mission critical capabilities that depend on spectrum today, as well as effectively and efficiently meet future requirements.

In my memorandum of June 28, 2010 (Unleashing the Wireless Broadband Revolution), I directed the Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), to collaborate with the Federal Communications Commission (FCC) to make 500 MHz of Federal and nonfederal spectrum available for wireless broadband use within 10 years. Executive departments and agencies (agencies), including NTIA, have done an excellent job of pursuing the twin goals of advancing their agency missions and promoting innovation and economic growth. Although existing efforts will almost double the amount of spectrum available for wireless broadband, we must make available even more spectrum and create new avenues for wireless innovation. One means of doing so is by allowing and encouraging shared access to spectrum that is currently allocated exclusively for Federal use. Where technically and economically feasible, sharing can and should be used to enhance efficiency among all users and expedite commercial access to additional spectrum bands, subject to adequate interference protection for Federal users, especially users with national security, law enforcement, and safety-of-life responsibilities. In order to meet growing Federal spectrum requirements, we should also seek to eliminate restrictions on commercial carriers' ability to negotiate sharing arrangements with agencies. To further these efforts, while still safeguarding protected incumbent systems that are vital to Federal interests and economic growth, this memorandum directs agencies and offices to take a number of additional actions to accelerate shared access to spectrum.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 et seq., and in order to promote economy and efficiency in Federal procurement, I hereby direct the following:

**SECTION 1. *Spectrum Policy Team.*** (a) The Chief Technology Officer and the Director of the National Economic Council, or their designees, shall co-chair a Spectrum Policy Team that shall include representatives from the Office of Management and Budget (OMB), the National Security Staff, and the Council of Economic Advisers. The Spectrum Policy Team shall work with NTIA to implement this memorandum. The Spectrum Policy Team may invite the FCC to provide advice and assistance.

(b) The Spectrum Policy Team shall monitor and support advances in spectrum sharing policies and technologies. Within 1 year of the date of this memorandum, the Spectrum Policy Team shall publish a report describing how NTIA and FCC are incorporating spectrum sharing into their spectrum management practices. The report shall include recommendations that enable more productive uses of spectrum throughout our economy and society and protect the current and future mission capabilities of agencies. The Spectrum Policy Team shall also assess national security, law enforcement, safety-of-life, economic, scientific, social, international, and other policy considerations related to licensed and unlicensed spectrum use, including standardization as well as the extent to which the revenue potential of spectrum auctions affects spectrum policy.

**SEC. 2. *Collaboration on Spectrum Sharing.*** (a) The Secretary of Commerce, working through NTIA, has been facilitating discussions between agencies and nonfederal entities that have produced an unprecedented level of information-sharing and collaboration to identify opportunities for agencies to relinquish or share spectrum, currently focusing on the 1695–1710 MHz band, the 1755–1850 MHz band, and the 5350–5470 and 5850–5925 MHz bands. The NTIA shall continue to facilitate these discussions and the sharing of data to expedite commercial entry into these bands where possible, provided that the mission capabilities of Federal systems designed to operate in these bands are maintained and protected, including through relocation, either to alternative spectrum or non-spectrum dependent systems, or through acceptable sharing arrangements. These discussions shall also be expanded to encompass more spectrum bands that may be candidates for shared access, specifically those in the range below 6 GHz, subject to the protection of the capabilities of Federal systems designed to operate in those bands.

(b) Within 3 months of the date of this memorandum, the Secretary of Commerce, working through NTIA and the National Institute of Standards and Technology (NIST), and building on the results from the Networking and Information Technology Research and Development Program, shall publish an inventory and description of Federal test facilities available to commercial and other stakeholders engaged in research, development, testing, and evaluation of technologies to enhance spectrum sharing and other spectrum-related efficiencies. To maximize the productive use of these facilities and to facilitate greater collaboration among agencies and nonfederal stakeholders, the Secretary of Commerce, working through NTIA, NIST, and other appropriate agencies, shall, within 6 months of the date of this memorandum, establish a plan for the development and promulgation of standard policies, best practices, and templates governing the following: research, development, testing, and evaluation of spectrum sharing technologies by and among commercial, Government, and academic stakeholders at Federal facilities.

(c) All policies, practices, and templates shall be subject to safeguards reasonably necessary to protect classified, sensitive, and proprietary data. Within 6 months of the date of this memorandum, the Spectrum Policy Team, in consultation with the Department of Justice, the National Archives and Records Administration, the Office of the Director of National Intelligence, and other appropriate agencies, shall, consistent with applicable law, including 5 U.S.C. 552, as amended by Public Law 107-306 and Public Law 11-175 [110-175], and Executive Order 13526 of December 29, 2009 (Classified National Security Information), implement policies for the sharing with authorized nonfederal parties of classified, sensitive, or proprietary data regarding assignments, utilization of spectrum, system configurations, business plans, and other information.

**SEC. 3. *Agency Usage of Spectrum.*** (a) The NTIA, in consultation with the Spectrum Policy Team and appropriate agencies, shall include in its Fourth Interim Report required by section 1(d) of my memorandum of June 28, 2010, a plan directing applicable agencies to provide quantitative assessments of the actual usage of spectrum in those spectrum bands that NTIA previously identified and prioritized in its Third Interim Report and such other bands as NTIA and the Spectrum Policy Team determine have the greatest potential to be shared with nonfederal users. Each agency's assessment shall be prepared according to such metrics and other parameters as are reasonably necessary to determine the extent to which spectrum assigned to the agency could potentially be made available for sharing with or release to commercial users, particularly in major metropolitan areas, without adversely affecting agencies' missions, especially those related to national security, law enforcement, and safety of life. Each assessment shall also include a discussion of projected increases in spectrum usage and needs and shall identify where access to nonfederal spectrum could aid in ful-

filling agency missions. The plan shall further require each agency to submit its assessments to NTIA and the Spectrum Policy Team within 12 months of the plan's release. In identifying spectrum bands with the greatest potential to be shared, NTIA and the Spectrum Policy Team shall consider the number and nature of Federal and nonfederal systems in a band, the technical suitability of the band for shared use, international implications, any potential for relocating Federal systems to comparable spectrum or otherwise enabling comparable capabilities, and other factors NTIA and the Spectrum Policy Team deem relevant based on consultation with agencies and other stakeholders. A band shall be identified as a candidate for shared access under this subsection only if it has been likewise identified under section 2(a) of this memorandum.

(b) The reporting of information under this section shall be subject to existing safeguards protecting classified, sensitive, and proprietary data. The NTIA shall release a summary of the assessments publicly to the extent consistent with law. The NTIA and the Spectrum Policy Team shall make any appropriate recommendations regarding the possible availability of spectrum in the subject bands for innovative and flexible commercial uses, including broadband, taking into account factors such as the nature of the Federal systems in the bands and the extent to which those systems occupy and use the bands.

(c) The NTIA shall design and conduct a pilot program to monitor spectrum usage in real time in selected communities throughout the country to determine whether a comprehensive monitoring program in major metropolitan areas could disclose opportunities for more efficient spectrum access, including via sharing. The NTIA shall work with agencies to ensure the program will not reveal sensitive or classified information. The NTIA shall consult with each agency to determine the correct technical parameters to monitor usage.

(d) Within 6 months of the date of this memorandum, NTIA shall take such actions as are necessary to require that each agency's regular reviews of its frequency assignments include a quantitative assessment of its actual usage of spectrum under such assignments.

(e) The NTIA shall also take such actions as are necessary to require that an agency requesting a frequency assignment or spectrum certification for systems operating between 400 MHz and 6 GHz verify that it must operate in this critical range, and that it will use the minimum spectrum reasonably necessary to most effectively meet mission requirements. The requesting agency shall also verify that it is not reasonable to satisfy such requirements in some other manner, such as at higher frequencies, via commercial services, or via a system that is not spectrum-dependent, whether due to cost, technology, implementation, performance reasons, international obligations, or other practical or legal constraints. In the case of system certification requests only, the requesting agency shall also present with its request a narrative explaining why its proposed solution will most effectively meet its mission requirements, in light of potential alternative approaches and all practical and legal constraints. Further, requesting agencies shall identify spectrum that will no longer be used by any legacy systems that are replaced. In implementing this subsection, NTIA shall take all steps necessary to protect against disclosure of sensitive and classified information.

SEC. 4. *Spectrum Efficiency in Procurements.* Agencies shall include spectrum efficiency when considering procurement of spectrum-dependent systems and hardware, as a technical requirement, an evaluation criterion for award, or both. The Director of OMB, in consultation with NTIA, shall develop and incorporate spectrum efficiency guidelines into budget and procurement processes. These guidelines shall facilitate, as appropriate, the design and procurement of systems that increase flexibility through means such as multiple-band tuning capabilities and the use of commercial systems. The guidelines also shall require, to the extent

possible, procurements of Federal systems such that emission levels resulting from reasonable use of adjacent spectrum will not impair the functioning of such systems, consistent with any applicable radio receiver performance criteria and international obligations.

SEC. 5. *Performance Criteria for Radio Receivers.* The FCC is strongly encouraged, in consultation with NTIA, where appropriate, the industry, and other stakeholders, to develop to the fullest extent of its legal authority a program of performance criteria, ratings, and other measures, including standards, to encourage the design, manufacture, and sale of radio receivers such that emission levels resulting from reasonable use of adjacent spectrum will not endanger the functioning of the receiver or seriously degrade, obstruct, or repeatedly interrupt the operations of the receiver. In developing such a program, the FCC is strongly encouraged to give due consideration to existing policies and prudent investments that have been previously made in systems, including receivers. In its consultation with the FCC, NTIA shall provide information regarding Federal receiver standards and agency practices under those standards.

SEC. 6. *Incentives for Agencies.* The Spectrum Policy Team shall, within 6 months of the date of this memorandum, publish a report making recommendations to the President regarding market-based or other approaches that could give agencies greater incentive to share or relinquish spectrum, while protecting the mission capabilities of existing and future systems that rely on spectrum use. The report shall consider whether the Spectrum Currency and Spectrum Efficiency Fund proposals made by the President's Council of Advisors on Science and Technology would be effective. The report shall also analyze the impact of the Commercial Spectrum Enhancement Act of 2004 (Title II of Public Law 108-494), as modified by the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96).

SEC. 7. *Rapid Deployment of Wireless Broadband.* The FCC is strongly encouraged, in collaboration with NTIA, where appropriate, to expedite the repurposing of spectrum and otherwise enable innovative and flexible commercial uses of spectrum, including broadband, to be deployed as rapidly as possible by:

(a) identifying spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users;

(b) identifying spectrum allocated for nonfederal uses that can be made available to agencies, on a shared or exclusive basis, particularly where necessary to accommodate agencies seeking to relocate systems out of bands that could be made available for licensed services or unlicensed devices;

(c) promulgating and enforcing rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance;

(d) establishing and maintaining conditions that promote a reliable secondary market for spectrum, including provisions enabling negotiated access by agencies and uses not addressed in subsection (b) of this section;

(e) promulgating and enforcing rules for licensed services and unlicensed devices to share Federal spectrum that accommodate mission changes and technology updates by both Federal and nonfederal users; and

(f) consulting with the Department of State regarding international obligations related to spectrum use.

SEC. 8. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to any agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) Nothing in this memorandum shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interest of national security or public safety.

(c) This memorandum shall be implemented consistently with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

(f) The Presidential Memorandum of November 30, 2004 (Improving Spectrum Management for the 21st Century), is hereby revoked.

(g) The Secretary of Commerce is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

[Reference to the National Security Staff deemed to be a reference to the National Security Council Staff, see Ex. Ord. No. 13657, set out as a note under section 3021 of Title 50, War and National Defense.]

## § 1302. Advanced telecommunications incentives

### (a) In general

The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

### (b) Inquiry

The Commission shall, within 30 months after February 8, 1996, and annually thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

### (c) Demographic information for unserved areas

As part of the inquiry required by subsection (b), the Commission shall compile a list of geographical areas that are not served by any provider of advanced telecommunications capability (as defined by subsection (d)(1))<sup>1</sup> and to the extent that data from the Census Bureau is available, determine, for each such unserved area—

- (1) the population;

- (2) the population density; and
- (3) the average per capita income.

### (d) Definitions

For purposes of this subsection:<sup>2</sup>

#### (1) Advanced telecommunications capability

The term “advanced telecommunications capability” is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

#### (2) Elementary and secondary schools

The term “elementary and secondary schools” means elementary and secondary schools, as defined in section 7801 of title 20.

(Pub. L. 104–104, title VII, § 706, Feb. 8, 1996, 110 Stat. 153; Pub. L. 107–110, title X, § 1076(gg), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 110–385, title I, § 103(a), Oct. 10, 2008, 122 Stat. 4096; Pub. L. 114–95, title IX, § 9215(ttt), Dec. 10, 2015, 129 Stat. 2190.)

#### REFERENCES IN TEXT

Subsection (d)(1), referred to in subsec. (c), was in the original “section 706(c)(1) of the Telecommunications Act of 1996” and was translated as reading “section 706(d)(1) of the Telecommunications Act of 1996”, which is classified to subsection (d)(1) of this section, to reflect the probable intent of Congress and the redesignation of subsec. (c) as (d) by Pub. L. 110–385, title I, § 103(a)(2), Oct. 10, 2008, 122 Stat. 4096.

#### CODIFICATION

Section was formerly set out as a note under section 157 of this title.

Section was enacted as part of the Telecommunications Act of 1996, and not as part of the Broadband Data Improvement Act which comprises this chapter.

#### AMENDMENTS

2015—Subsec. (d)(2). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2008—Subsec. (b). Pub. L. 110–385, § 103(a)(1), substituted “annually” for “regularly”.

Subsecs. (c), (d). Pub. L. 110–385, § 103(a)(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

2002—Subsec. (c)(2). Pub. L. 107–110 substituted “section 7801 of title 20” for “paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

#### DEFINITIONS

For definitions of terms used in this section, see section 3(b) of Pub. L. 104–104, set out as a Common Terminology note under section 153 of this title.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “section:”.

**§ 1303. Improving Federal data on broadband****(a) Omitted****(b) International comparison****(1) In general**

As part of the assessment and report required by section 1302 of this title, the Federal Communications Commission shall include information comparing the extent of broadband service capability (including data transmission speeds and price for broadband service capability) in a total of 75 communities in at least 25 countries abroad for each of the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers.

**(2) Contents**

The Commission shall choose communities for the comparison under this subsection in a manner that will offer, to the extent possible, communities of a population size, population density, topography, and demographic profile that are comparable to the population size, population density, topography, and demographic profile of various communities within the United States. The Commission shall include in the comparison under this subsection—

(A) a geographically diverse selection of countries; and

(B) communities including the capital cities of such countries.

**(3) Similarities and differences**

The Commission shall identify relevant similarities and differences in each community, including their market structures, the number of competitors, the number of facilities-based providers, the types of technologies deployed by such providers, the applications and services those technologies enable, the regulatory model under which broadband service capability is provided, the types of applications and services used, business and residential use of such services, and other media available to consumers.

**(c) Consumer survey of broadband service capability****(1) In general**

For the purpose of evaluating, on a statistically significant basis, the national characteristics of the use of broadband service capability, the Commission shall conduct and make public periodic surveys of consumers in urban, suburban, and rural areas in the large business, small business, and residential consumer markets to determine—

(A) the types of technology used to provide the broadband service capability to which consumers subscribe;

(B) the amounts consumers pay per month for such capability;

(C) the actual data transmission speeds of such capability;

(D) the types of applications and services consumers most frequently use in conjunction with such capability;

(E) for consumers who have declined to subscribe to broadband service capability,

the reasons given by such consumers for declining such capability;

(F) other sources of broadband service capability which consumers regularly use or on which they rely; and

(G) any other information the Commission deems appropriate for such purpose.

**(2) Public availability**

The Commission shall make publicly available the results of surveys conducted under this subsection at least once per year.

**(d) Improving Census data on broadband**

The Secretary of Commerce, in consultation with the Federal Communications Commission, shall expand the American Community Survey conducted by the Bureau of the Census to elicit information for residential households, including those located on native lands, to determine whether persons at such households own or use a computer at that address, whether persons at that address subscribe to Internet service and, if so, whether such persons subscribe to dial-up or broadband Internet service at that address.

**(e) Proprietary information**

Nothing in this chapter shall reduce or remove any obligation the Commission has to protect proprietary information, nor shall this chapter be construed to compel the Commission to make publicly available any proprietary information.

(Pub. L. 110-385, title I, §103, Oct. 10, 2008, 122 Stat. 4096.)

## CODIFICATION

Section is comprised of section 103 of Pub. L. 110-385. Subsec. (a) of section 103 of Pub. L. 110-385 amended section 1302 of this title.

**§ 1304. Encouraging State initiatives to improve broadband****(a) Purposes**

The purposes of any grant under subsection (b) are—

(1) to ensure that all citizens and businesses in a State have access to affordable and reliable broadband service;

(2) to achieve improved technology literacy, increased computer ownership, and broadband use among such citizens and businesses;

(3) to establish and empower local grassroots technology teams in each State to plan for improved technology use across multiple community sectors; and

(4) to establish and sustain an environment ripe for broadband services and information technology investment.

**(b) Establishment of State broadband data and development grant program****(1) In general**

The Secretary of Commerce shall award grants, taking into account the results of the peer review process under subsection (d), to eligible entities for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each State.

**(2) Competitive basis**

Any grant under subsection (b) shall be awarded on a competitive basis.



**(c) Eligibility**

To be eligible to receive a grant under subsection (b), an eligible entity shall—

- (1) submit an application to the Secretary of Commerce, at such time, in such manner, and containing such information as the Secretary may require;
- (2) contribute matching non-Federal funds in an amount equal to not less than 20 percent of the total amount of the grant; and
- (3) agree to comply with confidentiality requirements in subsection (h)(2) of this section.

**(d) Peer review; nondisclosure****(1) In general**

The Secretary shall by regulation require appropriate technical and scientific peer review of applications made for grants under this section.

**(2) Review procedures**

The regulations required under paragraph (1) shall require that any technical and scientific peer review group—

- (A) be provided a written description of the grant to be reviewed;
- (B) provide the results of any review by such group to the Secretary of Commerce; and
- (C) certify that such group will enter into voluntary nondisclosure agreements as necessary to prevent the unauthorized disclosure of confidential and proprietary information provided by broadband service providers in connection with projects funded by any such grant.

**(e) Use of funds**

A grant awarded to an eligible entity under subsection (b) shall be used—

- (1) to provide a baseline assessment of broadband service deployment in each State;
- (2) to identify and track—
  - (A) areas in each State that have low levels of broadband service deployment;
  - (B) the rate at which residential and business users adopt broadband service and other related information technology services; and
  - (C) possible suppliers of such services;
- (3) to identify barriers to the adoption by individuals and businesses of broadband service and related information technology services, including whether or not—
  - (A) the demand for such services is absent; and
  - (B) the supply for such services is capable of meeting the demand for such services;
- (4) to identify the speeds of broadband connections made available to individuals and businesses within the State, and, at a minimum, to rely on the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers, to promote greater consistency of data among the States;
- (5) to create and facilitate in each county or designated region in a State a local technology planning team—
  - (A) with members representing a cross section of the community, including representatives of business, telecommunications labor

organizations, K-12 education, health care, libraries, higher education, community-based organizations, local government, tourism, parks and recreation, and agriculture; and

(B) which shall—

- (i) benchmark technology use across relevant community sectors;
- (ii) set goals for improved technology use within each sector; and
- (iii) develop a tactical business plan for achieving its goals, with specific recommendations for online application development and demand creation;

(6) to work collaboratively with broadband service providers and information technology companies to encourage deployment and use, especially in unserved areas and areas in which broadband penetration is significantly below the national average, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers to deploy;

(7) to establish programs to improve computer ownership and Internet access for unserved areas and areas in which broadband penetration is significantly below the national average;

(8) to collect and analyze detailed market data concerning the use and demand for broadband service and related information technology services;

(9) to facilitate information exchange regarding the use and demand for broadband services between public and private sectors; and

(10) to create within each State a geographic inventory map of broadband service, including the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers, which shall—

(A) identify gaps in such service through a method of geographic information system mapping of service availability based on the geographic boundaries of where service is available or unavailable among residential or business customers; and

(B) provide a baseline assessment of statewide broadband deployment in terms of households with high-speed availability.

**(f) Participation limit**

For each State, an eligible entity may not receive a new grant under this section to fund the activities described in subsection (d) within such State if such organization obtained prior grant awards under this section to fund the same activities in that State in each of the previous 4 consecutive years.

**(g) Reporting; broadband inventory map**

The Secretary of Commerce shall—

(1) require each recipient of a grant under subsection (b) to submit a report on the use of the funds provided by the grant; and

(2) create a web page on the Department of Commerce website that aggregates relevant information made available to the public by grant recipients, including, where appropriate, hypertext links to any geographic inventory

maps created by grant recipients under subsection (e)(10).

**(h) Access to aggregate data**

**(1) In general**

Subject to paragraph (2), the Commission shall provide eligible entities access, in electronic form, to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.

**(2) Limitation**

Notwithstanding any provision of Federal or State law to the contrary, an eligible entity shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity. This paragraph applies only to information submitted by the Commission or a broadband provider to carry out the provisions of this chapter and shall not otherwise limit or affect the rules governing public disclosure of information collected by any Federal or State entity under any other Federal or State law or regulation.

**(i) Definitions**

In this section:

**(1) Commission**

The term “Commission” means the Federal Communications Commission.

**(2) Eligible entity**

The term “eligible entity” means—

(A) an entity that is either—

(i) an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State;

(ii) a nonprofit organization that is described in section 501(c)(3) of title 26 and that is exempt from taxation under section 501(a) of such title; or

(iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and

(B) is the single eligible entity in the State that has been designated by the State to receive a grant under this section.

**(j) No regulatory authority**

Nothing in this section shall be construed as giving any public or private entity established or affected by this chapter any regulatory jurisdiction or oversight authority over providers of broadband services or information technology.

(Pub. L. 110-385, title I, § 106, Oct. 10, 2008, 122 Stat. 4099.)

**§ 1305. Broadband Technology Opportunities Program**

**(a) Establishment**

The Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission), shall establish a national broadband service de-

velopment and expansion program in conjunction with the technology opportunities program, which shall be referred to as the Broadband Technology Opportunities Program. The Assistant Secretary shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs.

**(b) Purposes**

The purposes of the program are to—

(1) provide access to broadband service to consumers residing in unserved areas of the United States;

(2) provide improved access to broadband service to consumers residing in underserved areas of the United States;

(3) provide broadband education, awareness, training, access, equipment, and support to—

(A) schools, libraries, medical and health-care providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture;

(4) improve access to, and use of, broadband service by public safety agencies; and

(5) stimulate the demand for broadband, economic growth, and job creation.

**(c) Consultation with States**

The Assistant Secretary may consult a State, the District of Columbia, or territory or possession of the United States with respect to—

(1) the identification of areas described in subsection (b)(1) or (2) located in that State; and

(2) the allocation of grant funds within that State for projects in or affecting the State.

**(d) Duties of Assistant Secretary**

The Assistant Secretary shall—

(1) establish and implement the grant program as expeditiously as practicable;

(2) ensure that all awards are made before the end of fiscal year 2010;

(3) seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; and

(4) report on the status of the program to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the

House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, every 90 days.

**(e) Eligibility**

To be eligible for a grant under the program, an applicant shall—

(1)(A) be a State or political subdivision thereof, the District of Columbia, a territory or possession of the United States, an Indian tribe (as defined in section 450b of title 25) or native Hawaiian organization;

(B) a nonprofit—

- (i) foundation,
- (ii) corporation,
- (iii) institution, or
- (iv) association; or

(C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest. In establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of this section in a technologically neutral manner;

(2) submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require;

(3) provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a showing that the project would not have been implemented during the grant period without Federal grant assistance;

(4) demonstrate, to the satisfaction of the Assistant Secretary, that it is capable of carrying out the project or function to which the application relates in a competent manner in compliance with all applicable Federal, State, and local laws;

(5) demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the requirements of subsection (f);

(6) disclose to the Assistant Secretary the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and

(7) provide such assurances and procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

**(f) Federal share**

The Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if—

- (1) the applicant petitions the Assistant Secretary for a waiver; and
- (2) the Assistant Secretary determines that the petition demonstrates financial need.

**(g) Authorization to make grants; purposes**

The Assistant Secretary may make competitive grants under the program to—

- (1) acquire equipment, instrumentation, networking capability, hardware and software,

digital network technology, and infrastructure for broadband services;

(2) construct and deploy broadband service related infrastructure;

(3) ensure access to broadband service by community anchor institutions;

(4) facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(5) construct and deploy broadband facilities that improve public safety broadband communications services; and

(6) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

**(h) Factors considered in award of grants**

The Assistant Secretary, in awarding grants under this section, shall, to the extent practical—

(1) award not less than 1 grant in each State;

(2) consider whether an application to deploy infrastructure in an area—

(A) will, if approved, increase the affordability of, and subscribership to, service to the greatest population of users in the area;

(B) will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area;

(C) will, if approved, enhance service for health care delivery, education, or children to the greatest population of users in the area; and

(D) will, if approved, not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area; and

(3) consider whether the applicant is a socially and economically disadvantaged small business concern as defined under section 637(a) of title 15.

**(i) Reporting and information requirements; deobligation of awards; Internet disclosure**

The Assistant Secretary—

(1) shall require any entity receiving a grant pursuant to this section to report quarterly, in a format specified by the Assistant Secretary, on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and the Assistant Secretary shall make these reports available to the public;

(2) may establish additional reporting and information requirements for any recipient of any assistance made available pursuant to this section;

(3) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available pursuant to this section;

(4) may, in addition to other authority under applicable law, deobligate awards to grantees that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary, and award these funds competitively to new or existing applicants consistent with this section; and

(5) shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least a list of each entity that has applied for a grant under this section, a description of each application, the status of each such application, the name of each entity receiving funds made available pursuant to this section, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity pursuant to this section, and such other information sufficient to allow the public to understand and monitor grants awarded under the program.

**(j) Publication of contractual conditions**

Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Commission, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the Commission's broadband policy statement (FCC 05-15, adopted August 5, 2005).

**(k) National broadband plan**

(1) Not later than 1 year after February 17, 2009, the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing a national broadband plan.

(2) The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include—

(A) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;

(B) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;

(C) an evaluation of the status of deployment of broadband service, including progress of projects supported by the grants made pursuant to this section; and

(D) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

(3) In developing the plan, the Commission shall have access to data provided to other Government agencies under the Broadband Data Improvement Act [47 U.S.C. 1301 et seq.].

**(l) Map of service availability and capability**

The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband

service capability is deployed and available from a commercial provider or public provider throughout each State. Not later than 2 years after February 17, 2009, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the National Telecommunications and Information Administration in a form that is interactive and searchable.

**(m) Regulations**

The Assistant Secretary shall have the authority to prescribe such rules as are necessary to carry out the purposes of this section.

(Pub. L. 111-5, div. B, title VI, §6001, Feb. 17, 2009, 123 Stat. 512.)

REFERENCES IN TEXT

The Broadband Data Improvement Act, referred to in subsec. (k)(3), is title I of Pub. L. 110-385, Oct. 10, 2008, 122 Stat. 4096, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

Section was enacted as part of the American Recovery and Reinvestment Act of 2009, and not as part of the Broadband Data Improvement Act which comprises this chapter.

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